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Attorney for Plaintiff  
CATHERINE A. BERRY

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CATHERINE A. BERRY,  
Plaintiff,

vs.

AIR FORCE CENTRAL WELFARE  
FUND;  
AIR FORCE INSURANCE FUND,  
Defendants.

CASE NO.: 2:21-cv-01977

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS**

Plaintiff CATHERINE A. BERRY, by and through her counsel of record, George F. Hand, Esq. of the law firm Hand & Sullivan, LLC, hereby files her her Opposition to Defendants' Motion to Dismiss. This Opposition os based upon the pleadings and papers on file with this Court, the attached memorandum of points and authorities, and any oral argument that this Court may entertain.

Dated: this 31<sup>st</sup> day of January, 2022

HAND & SULLIVAN, LLC

By: 

GEORGE F. HAND, ESQ.  
SBN 8483  
3442 N. Buffalo Drive  
Las Vegas, Nevada 89129  
Attorneys for Plaintiff  
CATHERINE A. BERRY

**MEMORANDUM OF POINTS AND AUTHORITIES****I. Background**

Defendants AIR FORCE CENTRAL WELFARE FUND and AIR FORCE INSURANCE FUND move to Dismiss Plaintiff's Complaint for mootness based upon their claim that they are current on all payments to Plaintiff, including penalties and interest, and that Plaintiff therefore lacks subject matter jurisdiction and fails to state a claim for relief. Plaintiff, however, brings the current Opposition, because Defendants have failed to pay reasonable attorneys' fees for these proceedings, as sought in ¶ 13 and part (b) of the Prayer for Relief in the Complaint. A Motion for the award of such fees is submitted contemporaneously with this Opposition.

Plaintiff Catherine A. Berry was the recipient of an award of periodic disability compensation in a "Compensation Order" filed on September 24, 2015, in the Office of the District Director for District 15, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, United States Department of Labor (the statutory "deputy commissioner," *see* 20 C.F.R. §§ 701.301(a)(7), 702.105), pursuant to § 19(e) of the Longshore Act, 33 U.S.C. § 919(e), and implementing regulations. On February 26, 2021, a Supplementary Order was served on Defendants declaring Defendants in default in paying what fell due pursuant to the earlier Compensation Order. On July 19, 2021, a second Supplementary Order was served on Defendants, which updated the amount declared in default based on Defendants' continuing non-payment and the continuing accrual of defaulted installments due since the February 26, 2021 order.

On October 27, 2021, Plaintiff filed a Complaint to enforce the second Supplementary Order. On or about November 13, 2021, Defendants paid Plaintiff \$97,962.06 of the compensation due, and on or about December 16, 2021, they paid the additional amount of \$17,162.83, satisfying their liability for the unpaid compensation whose enforcement was sought by the Complaint, in accordance with the second Supplementary Order; however, according to applicable law, Defendants still owe the reasonable attorneys' fees also sought

1 by the Complaint and particularized in the Motion for an award of such fees filed with this  
2 Response.

## 3 II. Legal Argument

4 Pursuant to Longshore Act § 28, 33 U.S.C. § 928, Plaintiff's attorneys are entitled to a  
5 reasonable attorney's fee for their services in the successful prosecution of the enforcement  
6 proceedings, to be paid by Defendants in addition to the amount of the judgment on the  
7 Supplementary Order. *E.g., Tahara v. Matson Terminals, Inc.*, 511 F.3d 950 (9th Cir. 2007).

8 Longshore Act § 28, 33 U.S.C. § 928(a) states:

9 (a) Attorney's fee; successful prosecution of claim

10 If the employer or carrier declines to pay any compensation on or before the  
11 thirtieth day after receiving written notice of a claim for compensation having been  
12 filed from the deputy commissioner, on the ground that there is no liability for  
13 compensation within the provisions of this chapter and the person seeking benefits  
14 shall thereafter have utilized the services of an attorney at law in the successful  
15 prosecution of his claim, there shall be awarded, in addition to the award of  
16 compensation, in a compensation order, a reasonable attorney's fee against the  
17 employer or carrier in an amount approved by the deputy commissioner, before the  
18 Board or court, as the case may be, which shall be paid directly by the employer or  
19 carrier to the attorney for the claimant in a lump sum after the compensation order  
20 becomes final.

21 Here, Defendants declined to pay Plaintiff within thirty days of receiving written notice  
22 of the claim for compensation, requiring Plaintiff to engage the services of an attorney to secure  
23 the compensation she was due and owing. Therefore, in accordance with Longshore Act § 28, 33  
24 U.S.C. § 928(a), Plaintiff is entitled to an award of a reasonable attorney's fee.

25 Defendants have failed to pay these attorney's fees as required by law. Plaintiff's  
26 Complaint includes a claim for the attorney's fees to which Plaintiff's attorneys are entitled.  
27 (Plaintiff's Complaint at 3:19-23, on file herein). Accordingly, Plaintiff's Complaint is not  
28 moot—this Court has subject matter jurisdiction over this matter and Plaintiff has stated a claim  
for relief. Consequently, dismissal of this action is inappropriate at this time. Plaintiff has filed  
its Motion for Attorneys Fees concurrently with this Opposition.

## 26 CONCLUSION

27 For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendants'  
28 Motion to Dismiss.

1 Respectfully submitted this 31<sup>st</sup> day of January 2022.

2 Of Counsel:

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**CERTIFICATE OF SERVICE**

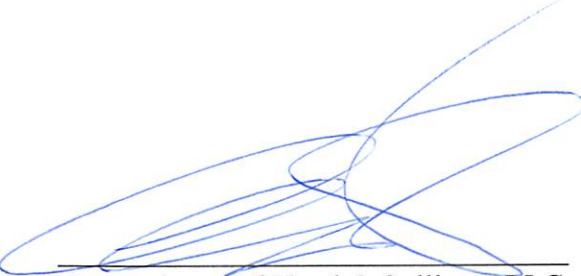
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** via CM/ECF filing system to the following:

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Dated: January 31, 2022



An employee of Hand & Sullivan, LLC